

July 9, 1996

BY FACSIMILE TRANSMISSION

Janeen E. Rosas
Assistant County Attorney
Office of the Hennepin County Attorney
Civil Division
A-2000 Government Center
Minneapolis, Minnesota 55487-0200

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Standke, Greene & Greenstein, Ltd.
17717 Highway 7
Minnetonka, Minnesota 55345

Re: Alison Moffat v. Hennepin County; OAH Docket No. 11-1700-9528-2

Dear Counsel:

I received voice mail messages from Ms. Rosas this morning in which she stated that she had not received a copy of Ms. Rowland's letter of July 1, 1996, asked whether Ms. Rowland has yet filed a response to the County's immunity motion, and indicated that Dr. Adelson will only be available on Wednesday from 9:00 a.m. to noon due to other appointments in the afternoon.

I have attached a copy of Ms. Rowland's July 1 letter to the facsimile transmission sent to Ms. Rosas. Based upon discussions held with counsel at the end of the last day of the hearing, Ms. Rowland will not be required to file a written response to the County's immunity motion until after the hearing is concluded. I am willing to accommodate Dr. Adelson's schedule, as long as she will be available on a future date if her cross-examination is not able to be completed in the time she has available on Wednesday.

I also wanted to notify you that I am granting the County's motion for leave to amend its answer in this matter to assert the additional affirmative defenses of official immunity, vicarious official immunity, and discretionary function immunity. Rule 15.01 of the Minnesota Rules of Civil Procedure provides that leave to amend pleadings "shall be freely given when justice so requires." Courts have liberally construed this rule and have permitted such amendments even if they change the party's legal theories unless the party opposing the amendment establishes some prejudice "other than merely having to defend against an additional claim or defense." See 1 D. Herr and R. Haydock, Minnesota Practice at 333-35 (1985) and cases cited therein. Although it is unfortunate that the County did not seek leave to amend at an earlier point in these proceedings, the

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Complainant was on notice of the County's general immunity claim because the original answer asserted qualified immunity as a defense and counsel for the County indicated in a conference call held a few days prior to the commencement of the hearing that it planned to move for a directed verdict on the grounds of immunity. The Complainant has been afforded the opportunity to address the County's motion in its written post-hearing brief. In addition, the Complainant may, if she wishes, seek a continuance under Rule 15.01 to meet the evidence provided by the County concerning its official immunity, vicarious official immunity, and discretionary function immunity claims. Under these circumstances, the County's Amended Answer filed on June 21, 1996, will be allowed.

Very truly yours,

BARBARA L. NEILSON
Administrative Law Judge

Telephone: 612/341-7604

BLN:lr